



# California Fair Political Practices Commission

November 7, 1985

Suzanne B. Gifford  
Assistant General Counsel  
Southern California Rapid Transit  
District  
425 South Main Street  
Los Angeles, CA 90013

Re: Your Request for Follow-Up  
Advice  
Our File No. A-85-201

Dear Ms. Gifford:

This letter is sent in response to your letter dated September 19, 1985 in follow-up to my advice letter of August 6, 1985 (No. A-85-134). You enclosed a letter from Mr. Charles H. Goldstein of Goldstein & Kennedy in which he questioned our reading of 2 Cal. Adm. Code Section 18700. He specifically pointed to subsection (a)(2)(B) of the regulation which provides:

[A consultant] does not include, however, a person who:

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Mr. Goldstein also noted in his letter that he possesses no policy or decisionmaking authority, and he solely advises the District on specific labor issues.

As I explained in my letter, we generally distinguish between those consultants who prepare a product or perform services for a specific matter and those consultants who provide more general assistance to a government agency on an on-going basis. We have noted that government attorneys participate in the highest level of decisionmaking through their advice and counsel. Accordingly, when a contract attorney provides advice

Suzanne B. Gifford  
November 7, 1985  
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and counsel to a government agency in their general decisionmaking on an on-going basis, it is our view that the attorney is actually participating in the governmental decisions within the meaning of Government Code Section 87100 in a manner similar to government attorneys and thus clearly possesses authority with respect to the agency decision under the terms of the regulation. This is true even if the attorney's advice is limited to a specific area of the law.

With respect to Mr. Goldstein, I would note again that any required financial disclosure should be tailored to the types of decisions in which he participates and to the types of economic interests potentially affected by those decisions.

I would also like to point out that a regulation defining the term "consultant" in more precise terms has been noticed for hearing by the Commission probably at its February 1986 meeting. This advice is consistent with the proposed regulation. We encourage your comments, as well as Mr. Goldstein's, on the regulation. I will place you on the mailing list for future notices on this regulation.

I trust that this letter answers Mr. Goldstein's concerns.

Sincerely,



Diane Maura Fishburn  
Counsel  
Legal Division

DMF:plh  
Enclosure: 2 Cal. Adm. Code Section 18700.2



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Southern California Rapid Transit  
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*E. ups*

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Advice  
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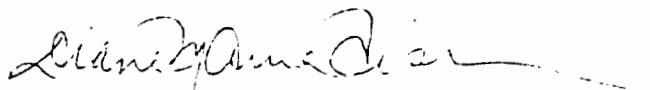
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Sincerely,



Diane Maura Fishburn  
Counsel  
Legal Division

DMF:plh  
Enclosure: 2 Cal. Adm. Code Section 18700.2



Suzanne B. Gifford  
Assistant General Counsel

SEP 23 8 27 AM '85

September 19, 1985

Ms. Diane Maura Fishburn  
Staff Counsel  
Legal Division  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804

Dear Ms. Fishburn:

Please review the enclosed letter from Mr. Goldstein, which was written to me in response to your opinion of August 6, 1985.

It appears that the definition of "Consultant" in Section 18700(a)(2)(B) of Title 2 of the Administrative Code is causing a great deal of confusion. On the one hand a consultant is, simply, a person who provides "information, advice, recommendation or counsel" (§18702(a)(2)). On the other hand a consultant is not a person who merely provides "information, advice, recommendation or counsel" (§18702(a)(2)(B)).

In order to be a consultant within the meaning of the Act, what type of "authority" with respect to an agency decision is required to be possessed according to subsection (a)(2)(B)?

It was my tentative view that Mr. Goldstein is a consultant, but that depending on the type of issues upon which he consults from time to time, may or may not have any reportable interests. However, a final decision obviously cannot be made until the import of Section 18700(a) is clearly understood.

I believe Mr. Goldstein has raised a very interesting and provocative point. As I do not desire to render advice which would cause a person to run afoul of the Fair Political Practices Act, I am requesting that you address the issue raised in Mr. Goldstein's letter.

Very truly yours,

A handwritten signature in cursive script that reads "Suzanne B. Gifford".  
Suzanne B. Gifford

Enclosure

cc: Charles Goldstein

Route to:			
RTP	1	GK	
PRG	1	CV	
JLE	1	OF	
ALLAN S. MORTON OF COUNSEL			

LAW OFFICES  
**GOLDSTEIN & KENNEDY**  
 1880 CENTURY PARK EAST, SUITE 1018  
 CENTURY CITY  
 LOS ANGELES, CALIFORNIA 90067  
 (213) 879-1401 AND 553-4746

SEP 23 10 27 AM '85

September 9, 1985

Suzanne B. Gifford, Esq.  
 Assistant General Counsel  
 Southern California Rapid Transit District  
 425 South Main Street  
 Los Angeles, CA 90013

Re: Request for Opinion from Fair  
Political Practices Commission

Dear Ms. Gifford:

I am in receipt of the response from Diana Maura Fishburn regarding the issue of whether I have an obligation to file a Statement of Economic Interests. I draw your attention to the definition of "consultant" under 2 Cal. Adm. Code Section 18700 (a)(2)(B) which specifically states:

(A consultant) does not include, however, a person who:

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

If you take the time to review my responsibilities to the District you will discover that I possess no policy or decision making authority but solely advise the District on specific labor issues. As a Consultant to the District my duties do not affect the types of financial interest covered by the Act. Rather than relying on the general analysis prepared by Ms. Fishburn, I suggest that you analyze my specific legal responsibilities to the District. I feel confident that you will discover that I am not a "consultant" within the meaning of the Political Reform Act, and as such, not obligated to submit an Economic Disclosure Statement.

Very truly yours,

  
 CHARLES H. GOLDSTEIN

CHG:jmf

# Memorandum

To : OPINION REQUEST MEETING PARTICIPANTS

Date : July 30, 1985

T-85-195202

From : FAIR POLITICAL PRACTICES COMMISSION  
Mary Ann

Subject: Request for advice from David Gould

FACTS: A major donor files a late contribution statement reporting a loan to a candidate of \$5,000. There is no written loan agreement. After the election, the major donor forgives the loan. The major donor is now filing a semi-annual statement, and reporting the forgiveness.

Regulation 18216(e) states "Any money received by a candidate... will be considered to be a loan...only if, at the time that the campaign statement or report is filed, there is a dated, written loan agreement..."

## QUESTIONS:

1. Should the major donor amend the late contribution report and the semi-annual statement to report a contribution and not a loan?, or
2. Has the major donor (and the candidate) violated the reporting requirements by reporting the contribution as a loan when it did not meet the criterion in 2 Cal. Admin. Code Section 18216?

It was decided at the opinion request meeting that the answers to questions 1 and 2 is no.

I informed Mr. Gould that no amendment is necessary since the loan forgiveness now constitutes a contribution. Informed him that if in the future a loan transaction occurs, to check the current year's requirements. Because of proposed legislation next year's requirements may be different.

TO: [ ] JEANNE [ ] JAY ( ) DAN  
 [ ] LYNN [ ] BARBARA ( ) JOHN K  
 [ ] ROGER [ ] CARLA ( ) MARY ANN  
 [ ] HELEN [ ] OTHER \_\_\_\_\_

FROM: Kvasager

DATE: July 30, 1983

[x] TELEPHONE ADVICE - SEE BELOW

[ ] CORRESPONDENCE ADVICE - SEE ATTACHED DRAFT  
 (IF YOU HAVE ANY COMMENTS, NOTIFY ADVISOR WITHIN 1 DAY)

FILE LOCATION: \_\_\_\_\_

INCLUDE IN ADVICE PACKAGE: YES [ ] NO [ ]

CALLER David Gould

REPRESENTING A Major Donor

PHONE NUMBER: 213/939-2486

QUESTION: 1985 a major donor makes a loan to a candidate--unaware of  
 the new requirement contained in 2 Cal. Admin. Code  
 Section 18216<sup>(e)</sup>--written agreement. Question: Should the  
 major donor amend the late contribution report and the  
 semi-annual statement to report a contribution and not  
 a loan or has the major donor (and the candidate) violated  
 the reporting requirements by reporting the contribution as a  
 loan when it did not meet the criterion in 2 Cal. Admin. Code  
 Section 18216.

ANSWER: No to both questions. Mr. Gould was informed that no amendment  
 would be required since the loan forgiveness now constitutes a  
 contribution. I informed Mr. Gould that proposed legislation  
 for next year  
 may change the current requirements/concerning a written loan  
 agreement. He is now aware of this year's requirements.